IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED:

Date: ***18th FEBRUARY 2016*** Signature: _____

CASE NO: 2015/2082

In the matter between:

TRAKA AFRICA (PTY) LIMITED Applicant

and

AMAYA INDUSTRIES First Respondent

VAN BLERK: MAURICE PETER Second Respondent

JUDGMENT

ADAMS AJ:

[1]. This is an application in terms of which the applicant seeks *inter alia* to interdict and restrain the first and the second respondents from utilizing or disclosing to third parties the applicant's confidential information, as well as for an order for the return of such confidential information in whatever form. The applicant also asks for an order interdicting the respondents from contacting the customers of the applicant.

[2]. The second respondent acknowledges that a *Confidentiality Agreement* was concluded between him and the applicant on the 4th of March 2009. However, the respondents oppose the application on various grounds.

[3]. The second respondent is a former sales consultant of the applicant, and is presently in the employ of the first respondent as a sales representative. It is contended by the applicant that the second respondent has unlawfully appropriated its confidential information and the respondents are unlawfully utilizing this information to compete with it.

[4]. The respondents contend *inter alia* that the applicant's application is a vindictive calculated move motivated by malice and a long standing feud between the sole member of the first respondent, Johan van Zyl *('Van*

Zyl'), and the applicant. Van Zyl goes to great lengths in explaining the genesis and the detail of the aforegoing family feud.

[5]. The specific relief sought in the notice of motion is an order in the following terms:

(a). *Interdicting the first and second respondents for a period of 18 months from using or utilising or disclosing in any way to any third party the applicant's confidential information and in particular its confidential information described in annexures **"TK6"** to **"TK14"** to the founding affidavit related to its:*

(i). *Customers and business associates;*

(ii). *Marketing strategies;*

(iii). *Contractual arrangements between the applicant, its clients and business associates;*

(iv). *Financial details including credit and discount terms relating to the applicant's customers; and*

(v). *Financial details including credit and discount terms relating to the applicant's customers; and*

(vi). *The details of prospective and existing customers.*

(b). *Interdicting the first and second respondents from in any way contacting or soliciting business, whether directly or indirectly, from the customers of the applicant listed in paragraphs 16 to 18 of the founding affidavit for a period of six months.*

(c). *Directing the first and second respondents to deliver up to the applicant all copies of the documentation forming part of the documentation described in paragraph 52 of the founding affidavit.*

[6]. The applicant conducts business in the access control and key management systems industry in the sub-Saharan market.

[7]. The first respondent also conducts business in the access control and key management systems industry in South Africa. The applicant contends that the first respondent is a direct competitor of the applicant.

BACKGROUND FACTS

[8]. The applicant was established in 2001 and conducts business in the access control and key management systems in the sub-Saharan market. It is the exclusive distributor in South Africa of the *Traka Key Management system,* which is imported from the United Kingdom.

[9]. Prior to 2008 Johan van Zyl *('Van Zyl')*, now the sole member of the first respondent and the deponent to the answering affidavit, was employed by the applicant as part of its management team.

[10]. In 2008 Van Zyl left the employ of the applicant and established the first respondent.

[11]. On 1 April 2009 the second respondent commenced employment with the applicant as a sales representative. Prior to the commencement of his employment with the applicant, second respondent was required to sign a *Confidentiality Agreement*, which he duly signed on 4 March 2009. The relevant terms of the confidentiality agreement are the following:

> *'2.1.1 the Employee [second respondent], by virtue of his association with the Company [the applicant] has become and will remain possessed of and has had and will continue to have access to the trade secrets and confidential information of the Company, including, inter alia, but, without limiting the generality of the aforegoing, the following matters, all of which are hereinafter referred to as "trade secrets":*
>
> *2.1.1.1 ... ...*
>
> *2.1.1.2 ... ...*

2.1.1.3 Knowledge of the customers and business associates of the Company;

2.1.1.4 Knowledge of the Company's marketing strategies;

2.1.1.5 ... ...

2.1.1.6 Contractual arrangements between the Company, its clients and business associates;

2.1.1.7 the financial details including credit and discount terms relating to the Company's clients;

2.1.1.8 ... ...

2.1.1.9 the names of prospective clients and their requirements'.

[12]. On 1 April 2014 second respondent emailed from his work email address at the applicant to his personal email address a number of the applicant's confidential documents, including a list of the applicant's prospective customers, including their complete contact details and what actions had been taken to secure business from them.

[13]. On 14 July 2014 second respondent emailed to his personal email address a specific extract of the applicant's prospective customer list relating to mines.

[14]. Also on 14 July 2014 second respondent emailed to his private email address an internal report of the applicant regarding follow up leads on prospective customers.

[15]. On 23 July 2014 second respondent emailed to his private email address a significant amount of the applicant's confidential pricing information, including quotation worksheets, the applicant's foreign exchange, airfreight, shipping and related costs in respect of a number of products as well as the prices at which the applicant offered certain products to its customers.

[16]. On 25 July 2014 second respondent emailed to his private email address the applicant's updated confidential sales prospect list for July 2014, which included information on *inter alia* sales categories, types of proposals, list prices and assessments on the probabilities of sales.

[17]. On 31 July 2014 second respondent emailed to his private email address an internal confidential document dealing with the pricing structure for a number of the applicant's products.

[18]. In early August 2014 Second respondent resigned from the applicant effective from the end of August 2014, stating that he intended to retire in order to spend more time with his family.

[19]. On 7 August 2014 second respondent emailed to his private email address a significant number of the applicant's confidential quotation worksheets, including confidential information relating to the applicant's foreign exchange, airfreight, shipping and related costs in respect of a number of its products.

[20]. On 20 August 2014 second respondent sent a quote for key cabinets to one of the applicant's clients, Lonmin, in the amount of R80,804.43. The applicant alleges that this amount would have been 20% in excess of the applicant's normal pricing for the item. This is denied by the respondents.

[21]. Also on 20 August 2014 second respondent sent a quote for key cabinets to another of the applicant's clients, De Beers, in the amount of R120,842.14, an amount that was, according to the applicant, also 20% higher than the applicant's normal pricing.

[22]. On 25 August 2014, mere days before his employment with the applicant was due to come to an end, the second respondent emailed to his private email address a list of all the email addresses of the applicant's customers.

[23]. On 29 August 2014, the last day of his employment with the applicant, second respondent emailed to his private email address the applicant's updated prospective customer lists for museums, hospitals and schools.

[24]. Subsequently, it came to the applicant's attention that second respondent had commenced employment with the first respondent once he had left the applicant's employ.

[25]. On 28 October 2014 the applicant's attorneys sent to second respondent a letter reminding him *inter alia* of his confidentiality obligations to the applicant, recording its loss of customers, and demanding that he sever his ties with the first respondent.

[26]. On 4 November 2014 the second respondent's attorneys of record responded to the letter of demand denying that he had signed a confidentiality agreement and stating that he had not disclosed any confidential information to his current employer.

[27]. On 19 January 2015 Elliot Magubane CC, a large customer of the applicant's, indicated by letter to the applicant that it had recently been approached by second respondent, while in the employ of the first respondent, with the proposal that all *Traka* cabinets installed at the Union Buildings be replaced with the first respondent's products, with a

view that in future all government departments will use the first respondent's products.

[28]. The applicant claims that it has long standing continuous business relationships of longer than two years with a number of its customers, twenty four in total, including for example the De Beers Group and the Anglo American Group. The first respondent counters this by claiming that some of the companies listed by the applicant as *'longstanding customers'* have in fact been customers of the first respondent since 2008 / 2009.

[29]. During 2009 to 2012, therefore long before the second respondent commenced employment with the first respondent, there were a number of approaches by the first respondent to a number of the companies listed by the applicant as their customers with whom they have longstanding continuous business relationships. There are also a couple of these entities, notably Lonmin (who placed an order with the first respondent during March 2014) and ACSA, to whom the first respondent sold and supplied three lockers during March 2010. For the rest, the first respondent appears to have been on a major marketing drive during 2009 – 2012, seemingly with limited success, and during that process made approaches to many of the companies on the list.

[30]. Accordingly, it was submitted on behalf of the first respondent that the alleged confidential information of the applicant did not have any effect on its business.

AN EVALUATION OF THE EVIDENCE

[31]. The existence of the confidentiality agreement is common cause. However, the second respondent disputes that he is in breach of the confidentiality agreement, although he does not dispute that the applicant's information enumerated above were transmitted to his personal email address under cover of the emails listed. First respondent denies that second respondent has disclosed to it the said information.

[32]. The second respondent explains in essence that the aforegoing emails were sent from his business email address to his private email address because he was often required to work from home because of a back operation he underwent during 2012. Also, so he explains, he sent the information to his personal email address towards the end of his tenure with the applicant, to enable him to address any queries from customers of the applicant should they call him personally after he had left the employ of the applicant.

[33]. The second respondent's assertion is untenable. There was a flurry of emails in the last month of his employment with the applicant. There is no

reason for the second respondent to have sent to his private email address all the information which he sent, other than the fact that he intended using it to compete unlawfully with his erstwhile employer.

[34]. It was submitted by Mr Kriel, Counsel for the respondents, that there is no evidence that the confidential information was ever disclosed to the first respondent by the second respondent. The inescapable conclusion, in my view, is that such information was disclosed to the first respondent. Why else would the second respondent go to the trouble of obtaining all of this information and run the risk of him being caught, when he had no intention of using it at his new place of employment. In any event, so the argument goes on behalf of the respondents, the *'confidential information'* could easily have been obtained by the respondents by other means.

[35]. Respondents do not contest that the applicant's sales information itself constitutes confidential information.

[36]. It is instructive to note that at no stage does the second respondent offer to return to the applicant the information which he acquired by sending same to his personal email address. The respondents claim that the names of the companies on the lists in the emails have little to do with customers of the applicant, but that they relate to *'leads'* which second

respondent was required to follow up on from time to time with a view to soliciting business.

[37]. In evaluating the version of the applicant and that of the respondents, the test to be applied is that set out in *Plascon-Evans Paints Ltd v. Van Riebeeck Paints (Pty) Ltd,* 1984 (3) SA 623 (AD).

[38]. Applying the principles in the *Plascon-Evans* case, I am of the view that the version of the respondents is so farfetched that it may be rejected on the papers. I am not persuaded that the family feud motivated the launch of this application. The fact of the matter is that a plethora of the applicant's information was acquired by the second respondent under somewhat clandestine circumstances. There can be little, if any doubt that the said information is of a confidential nature, as it related to the exact details of the customers of the applicant, prospective customers, pricing schedules, detailed marketing plans and details relating to costings of contracts. By all accounts this information is of value to the applicant as it had been acquired after they had spent time and money in the process of acquiring or obtaining it. The information, for example, would indicate to the applicant, and by implication to any of its competitors, which companies or entities have the potential to send business their way and which ones were lost causes.

[39]. Accordingly, I find that the second respondent is in possession of the applicant's confidential information, and that he has disclosed to the first respondent such information.

[40]. It is against these background facts that I am required to determine whether the applicant is entitled to the relief claimed, and whether its confidential information is worthy of protection. It is not what the applicant says is worthy of protection that should be protected, but that, objectively viewed worthy of protection, which the law regards as protectable interest.

THE APPLICABLE LEGAL PRINCIPLES

[41]. I am of the view that the evidence, considered in light of the *Plascon-Evans* rule, shows on a balance of probabilities that:

(a). The applicant has an interest in the information acquired by the second respondent.

(b). The information appropriated was the applicant's confidential information;

(c). The second respondent had a contractual relationship with the applicant which imposed a duty on him to preserve the confidence of

information imparted to him during the course of his employment with applicant; and

(d). The second respondent knowingly misappropriated that information by disclosing it to the first respondent.

[42]. In that regard, see *Waste Products Utilisation (Pty) Ltd v Wilkes & Another,* 2003 (2) SA 515 (WLD), especially at 573I – 581.

[43]. In the *Waste Products* matter, the court, dealing with the requirement to establish misuse of confidential information (namely improper possession or use of that information, whether as a springboard or otherwise), held as follows at 582E-H:

> *'It has already been established that the defendants used the confidential information obtained about the plaintiff's plant and processes. It is useful, nonetheless, to consider also the concept of* springboarding, *since the same conduct may constitute both unlawful use of confidential information and the use of that information to gain a springboard in order to compete.*
>
> *"Springboarding" entails not starting at the beginning in developing a technique, process, piece of equipment or product, but using as the starting point the fruits of someone else's labour. Although the springboard concept applies in regard to confidential information, the*

misuse of the fruits of someone else's labour may be regarded in a suitable case as unlawful even where the information copied is not confidential. This was the case in Schultz v Butt, *1986 (3) SA 667 (A), where the boat hull designed by the plaintiff and copied by the defendant was found not to be confidential because it was in the public domain. But the copying of it, as a springboard, was regarded as unlawful.'*

[44]. The court continued at 583F-G:

'In terms of the springboard doctrine, an interdict against the use of confidential information may be limited by the duration of the advantage obtained, or the time saved, by reason of having had access to the confidential information.'

[45]. Public policy dictates that agreements entered into voluntarily are binding and enforceable. Agreements in restraint of trade, and by implication confidentiality agreements, voluntarily entered into pursuant to one's right to freedom to contract, are thus valid and enforceable unless the party seeking to escape these agreements can show that the agreement is unreasonable and therefore contrary to public policy.[1]

[1] *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA) at paragraph [10]; *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A) and *Hirt & Carter (Pty) Ltd v Mansfield and Another* 2008 (3) SA 512 (D)1 at paragraph [39]).

[46]. Therefore, an agreement in restraint of trade will generally be considered unreasonable, and thus contrary to public policy, if it does not protect some legally recognisable interest of the party seeking to enforce it, but merely seeks to eliminate competition. A party seeking to enforce a restraint must invoke the restraint agreement and prove its breach. A respondent who seeks to avoid the restraint bears an *onus* to demonstrate, on a balance of probabilities, that the restraint is unenforceable because it is unreasonable.[2]

[47]. In applying the test set out in *Basson v Chilwan,*[3] for determining the reasonableness, the following questions must be asked:

(a). Is there an interest of the one-party which is deserving of protection?

(b). Is that interest prejudiced by the other party?

(c). If so, does that interest weigh up qualitatively and quantitatively against the interest of the latter party that he or she should not be economically inactive and unproductive?

(d). Is there another facet of public policy that requires that the restraint should be maintained or rejected?

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[2] *New Justfun Group (Pty) Ltd v Turner & Ors* [2014] LALCJHB 177 (14 May 2014).

[3] 1993 (2) SA 742 (A).

[48]. Proprietary interests that are worthy of protection are essentially of two kinds, namely:

(a). confidential matter that could be used by a competitor to gain a competitive advantage, usually referred to as *'trade secrets'*; and

(b). relationships with customers, potential customers, suppliers and others that go to make up what is referred to as the *'trade connections'* of the business.[4]

[49]. The aforegoing principles, whilst specifically enunciated in the cases cited in the context of restraint of trade agreements and clauses, are equally applicable to confidentiality agreements.

WEIGHING OF INTERESTS

[50]. The issue for consideration is how the applicant's interest weighs qualitatively and quantitatively against the interest of the respondents to be economically active and productive.

[51]. The respondents contended that the applicant mistakes healthy competition for unlawful competition and that the only purpose of the application is to run the first respondent into the ground.

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[4] *Sibex Engineering Services (Pty) Ltd v Van Wyk,* 1991 (2) SA 482 (T).

[52]. It is also argued that the second respondent's right to earn a living in the area of his chosen profession would be severely restricted when the relief sought by the applicant is granted.

[53]. In my view, the claim by the second respondent that he has no intention of using the applicant's information does not avail the respondents. I endorse this finding with the dictum in In *Experian South Africa (Pty) Ltd v Haynes and Another*[5] that:

> *'The ex-employer seeking to enforce against his ex-employee a protectable interest recorded in a restraint, does not have to show that the ex-employee has in fact utilised information confidential to it. It need merely show that the ex-employee could do so. The very purpose of the restraint agreement is to relieve the applicant from having to show* bona fides *or lack of retained knowledge on the part of the respondent concerning the confidential information. In these circumstances, it is reasonable for the applicant to enforce the bargain it has exacted to protect itself. Indeed, the very ratio underlying the bargain is that the applicant should not have to contend itself with crossing his fingers and hoping that the respondent would act honourably or abide by the undertakings that he has given. It does not lie in the mouth of the ex-employee, who has breached a restraint agreement by taking up employment with a*

[5] [2012] ZAGPJHC 105; 2013 (1) SA 135 (GSJ); (2013) 34 ILJ 529 (GSJ) at para 18 -20.

competitor to say to the ex-employer "Trust me: I will not breach the restraint further than I have already been proved to have done".[6]

THE PUBLIC INTEREST

[54]. The public interest dictates that I interrogate the reasonableness of the restraint period.

[55]. Applicant applies for an order interdicting the respondents for a period of 18 months from using the confidential information. Applicant also requests the court to interdict the respondents from contacting any of its clients for a period of six months.

[56]. I will deal with these periods later in my judgment.

THE REQUIREMENTS FOR OBTAINING FINAL RELIEF

[57]. It is trite that in order to obtain final relief by way of an interdict an applicant must demonstrate that it has a clear right, that it has suffered actual harm or reasonably apprehends that it will suffer harm, and that there is no other satisfactory remedy available to the applicant other than an interdict.

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[6] Above n 12 at para 22.

[58]. The requisites for a final interdict were stated in *Setlogelo v Setlogelo*, 1914 AD 221, as follows:

> *'The requisites for the right to claim an interdict are well known; a clear right, injury actually committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy.'*

A CLEAR RIGHT

[59]. An employee has an obligation not to disclose the confidential information of his employer to any third party. The employer has a right to protect its confidential information. During the course of his employment if an employee discloses such information this would amount to a breach of the employment contract.

[60]. If the employee is privy to confidential information during the course of his employment he is also bound not to disclose that information to third parties after termination of his employment because *'it is unlawful for a servant to take his master's confidential information or documents and use them to compete with the master'.* If he does so he is liable in delict.

[61]. Unlawful competition arises from wrongful interference with another trader's rights resulting in loss. The misuse of a party's confidential information in order to advance one's own business interests and

activities at the expense of a competitor's is wrongful if it would be contrary to the *boni mores* of the community to allow such conduct.

[62]. Second respondent emailed certain confidential information pertaining to the applicant's business to his private email address prior to the termination of his employment with the applicant, and that immediately after the termination of his employment with the applicant second respondent took up employment with the first respondent.

[63]. Furthermore, the respondents unlawfully enticed the applicant's existing and prospective customers to trade with the first respondent instead of the applicant. In so doing the respondents misused the applicant's confidential information.

[64]. The confidential information obtained by the respondents is of particular use and significance to the applicant because it sets out the applicant's entire client base, as well as the tailoring of pricing to meet each of these customers' requirements. It also contains information pertaining to the profit margins and costs of the applicant. In the hands of a competitor such information is of significant economic value as it enables a competitor such as the first respondent to tailor its pricing and other customer offerings to undercut or otherwise outbid the applicant. Second respondent knew, or ought to have known, by virtue of having signed the

confidentiality agreement, that the applicant's client lists and pricing strategies were confidential. As such he had a duty not to disclose such information to the first respondent or any third party. The respondents therefore obtained the confidential information of the applicant in an improper manner.

[65]. The respondents have clearly engaged in conduct that is calculated unlawfully to undermine the applicant's business. By attempting to solicit the business of the applicant's customers the respondents have furthermore unlawfully interfered in the applicant's contractual relations.

HARM ACTUALLY COMMITTED OR REASONABLY APPREHENDED

[66]. The applicant has set out in its affidavits the harm that it has suffered in losing several of its existing clients to the first respondent following second respondent's departure from the applicant. The respondents have attempted to solicit the business of the applicant's customers directly following the departure of the second respondent. This is blatantly harmful to the applicant's business and, it is submitted, justifies the grant of an interdict.

THE ABSENCE OF ANY OTHER SATISFACTORY REMEDY

[67]. The applicant's confidential information in the hands of the respondents presents an ongoing threat of further harm to the applicant since they may continue to entice the applicant's clients to trade with the respondents. As alleged in the founding affidavit, if the applicant were to institute a damages claim this would not stop the respondents' unlawful conduct.

[68]. Furthermore, the detrimental effect of the respondents enticing away the applicant's customers would mean that by the time any action for damages is heard in court the applicant's entire business may have been destroyed.

[69]. It would be near impossible to quantify such damages. In any event at that point the applicant may not be able to afford litigation to prosecute a claim for damages.

[70]. The applicant alleged in its founding affidavit that second respondent was privy to the pricing schedules and strategies of the applicant during the course of his employment and that he used these to entice the applicant's customers to cancel their contracts with the applicant and do business with the first respondent. The respondents could not deny that

second respondent emailed the applicant's full client list to his personal email address in the last few days of his employment with the applicant.

[71]. Furthermore, they could not deny that in the period proximate to his leaving the applicant's employment that he similarly emailed the applicant's pricing schedules and sales forecasts to his private email address. This information is of necessity confidential because the applicant's pricing structures indicate the margins and mark-ups on each of its products to its customers as well as the pricing strategies in relation thereto.

[72]. Likewise, the contact details and names of the applicant's entire directory of clients is confidential as in the hands of a competitor such information would enable a competitor to contact the applicant's clients, be privy to its pricing strategies, discounts to clients, cost and profit margins, and undercut its prices.

[73]. The respondents cannot explain away second respondent emailing this documentation to his private email address. He had a duty to act in good faith viz his employer. It does not benefit the respondents to allege that the confidential information obtained by second respondent was not, or will not, be transmitted to the first respondent or so used. An employer should not have to *'cross its fingers'* that its former employee will not use

its confidential information, all the more so in the face of evidence that the employee has already breached the confidentiality agreement.

[74]. The very purpose of the applicant concluding a confidentiality agreement with second respondent was to endeavour to ensure that he would not take the applicant's confidential information and use it to the detriment of the applicant's business.

[75]. Furthermore, in our law it is a general principle that the intentional interference by a third party in the contractual relationship of another is unlawful. This principle applies to competitors in business.

THE RELIEF SOUGHT

[76]. I have found that the conduct of second respondent was in breach of the applicant's rights arising from the *Confidentiality Agreement* concluded between them. It constitutes the delict of unlawful competition, as do the actions of first respondent, in that it has unlawfully made use of confidential information belonging to the applicant as a springboard in order to compete with it.

[77]. In addition, I am satisfied that the applicant has established an injury already committed and that the ongoing harm is reasonably apprehended for the future.

[78]. The applicant has no other satisfactory remedy. Even though the applicant may be able to sue for damages, the difficulty faced by it is how its damages claim could ever be properly quantified, let alone proven.

[79]. The interdictory relief sought by the applicant is for the limited period of 18 and 6 months respectively.

[80]. The respondents should be interdicted from doing business with the applicant's main customers and its prospective customers while the benefit they secured from their unlawful conduct dissipates.

[81]. The determination of the period of an interdict in cases such as these almost always entails some form of approximation, and a relatively robust approach is required. This is because it is a somewhat artificial exercise to ascertain the time benefit a wrongdoer has achieved by misusing confidential information or springboarding. Such a robust approach was adopted in *Telefund Raisers CC v Isaac & Others* 1998 (1) SA 521 (C) at 536G where the court determined the duration of the interdict by applying fair and equitable considerations.

[82]. The applicant maintains that the respondents should be interdicted for a period of 18 months from using the confidential information, and for a period of 6 months from contacting the customers of the applicant. I am of the view a period of approximately 12 & 6 months respectively are not unreasonable, given the fact that a period in excess of 12 months has already elapsed since the application was launched.

[83]. Taking all of these factors into consideration and adopting a robust approach, it seems to me to be fair and equitable to interdict the respondents from approaching the applicant's customers for a period of approximately 6 months and from using the confidential information for a period of approximately 12 months.

[84]. I have already indicated that at no stage did the respondents tender to return to the applicant its confidential information which they acquired. Accordingly, the applicant is entitled to an order for the return of such information.

[85]. In the circumstances, I am of the view that the applicant is entitled to the relief sought in the notice of motion.

COSTS

[86]. The applicant has asked that cost on the scale as between attorney and client should be awarded in its favour. I have had regard to the oft quoted decision: *In re: Alluvial Creek Ltd*, 1929 CPD 532 in which case the principle is laid down that, in its discretion to award a punitive costs order, the court should have regard to the proceedings by a party which are vexatious in that they put the other side to unnecessary trouble and expense which the other side ought not to bear.

[87]. I am not persuaded that in the circumstances of this matter a punitive cost order is warranted, and in the exercise of my discretion I intend awarding cost on the ordinary scale as between the party and party.

ORDER:

Accordingly, I make the following order:-

1. The first and second respondents are interdicted and restrained, until the **31st January 2017**, from using or utilising or disclosing in any way to any third party the applicant's confidential information and in particular its confidential information described in annexures **"TK6"** to **"TK14"** to the founding affidavit relating to its:

(a). Customers and business associates;

(b). Marketing strategies;

(c). Contractual arrangements between the applicant, its clients and business associates;

(d). Financial details including credit and discount terms relating to the applicant's customers;

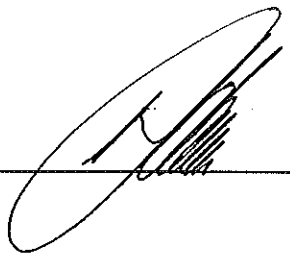
(e). Financial details including credit and discount terms relating to the applicant's customers; and

(f). The details of prospective and existing customers.

2. The first and second respondents are interdicted and restrained, until the **31st July 2016**, from in any way contacting or soliciting business, whether directly or indirectly, from the customers of the applicant listed in paragraphs 16 to 18 of the founding affidavit.

3. The first and second respondents are directed to return and deliver to the applicant all copies of the documentation forming part of the documentation described in paragraph 52 of the founding affidavit.

4. The first and second respondents shall pay the applicant's costs jointly and severally, the one paying the other to be absolved.



L ADAMS
Acting Judge of the High Court
Gauteng Local Division, Johannesburg

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HEARD ON:	5th November 2015
JUDGMENT DATE:	18th February 2016
FOR THE APPLICANT:	Adv S Bunn
INSTRUCTED BY:	Crawford & Associates
FOR THE DEFENDANT:	Adv Z Francois Kriel
INSTRUCTED BY:	Du Toit Attorneys